

# Quid Novi

MAR 01 1995

LIBRARY



McGILL University Libraries



3 101 432 587 G

Volume XV, No.16

UNIVERSITÉ McGILL FACULTÉ DE DROIT  
McGILL UNIVERSITY FACULTY OF LAW

13 Mars 1995  
March 13, 1995

## L'illusion du bilinguisme, ou pourquoi le débat n'aura pas lieu

Mathieu Legris et Véronique-  
Élisabeth Marquis  
BCL I

L'humain aime croire en quelque chose d'idéal. C'est pourquoi nous avons voulu croire que «l'environnement bilingue et comparatif» qui est le credo de cette faculté existait vraiment.

C'était une erreur.

La Faculté s'est donné cette très belle image de bilinguisme. Cette image n'est en fait qu'une illusion. On ne peut nier que certains avantages sont consentis aux étudiants de langue française: le droit d'assister à des cours en français, de poser des questions et de répondre à celles du

professeur dans leur langue. Cette intention serait louable si elle était respectée. Ce n'est pas le cas. Les manquements à la pratique du bilinguisme de la Faculté de droit de l'Université McGill sont trop nombreux. Or, quand les exceptions sont plus importantes que la règle, il faut peut-être repenser la règle...

Quelques exemples pour étayer ces propos.

Promenez-vous dans la bibliothèque de droit, le temple sacré du savoir de la Faculté. Les erreurs orthographiques en français y sont nombreuses et visibles. Vous n'avez qu'à visiter les «ORGANISATIONS INTERNATIONAUX» au 3e sud,

juste à côté des «DOCUMENTS AERO-SPATIALES» ou, au 3e nord, les textes qui nous viennent de la «COLUMBIE BRITANNIQUE» ou bien à remarquer le nombre d'accents manquants ou mal placés dans les affiches en général. Il y a de quoi avoir honte quand une université québécoise affiche, insouciante, de telles erreurs de français. Tous s'entendront pour dire que la base du bilinguisme est un respect égal des deux langues mais l'anglais se trouve-t-il ici aussi massacré?

Rendez-vous ensuite dans les salles de cours. Vous pourrez assister à un exercice de «deux poids, deux mesures» très agressant. Par exemple, le recueil

(Continued on page 6)

## Diantre! Qui sommes-nous?

Stéphanie Cartier, BCL I

Dans la vague des évaluations de cours, de la bibliothèque et de la Faculté en général, je vous en propose une autre... Je suis en première année et, mes collègues seront d'accord, un certain «existentialisme juridique» nous habpe assez facilement. Par conséquent, amusons-nous à cerner notre identité d'étudiants juristes, de la même façon

que le proposent les «pseudo-psycho-tests» à la mode...

1. Comment vous présentez-vous en relation avec votre domaine d'étude?

a) Vous êtes un être humain qui acquiert progressivement un potentiel de connaissances relatives aux sciences sociales, lesquelles connaissances

(Continued on page 7)

In This Issue  
Dans ce numéro

Announcements	2
Editorial	3
Jody Talk	4
I'm Gonna Get You	5
Gale Cup Moot	8

# Announcements / Annonces



## ANNIE MACDONALD LANGSTAFF WORKSHOP

**Marie-France Bich,**  
Professeure, Faculté de Droit,  
Université de Montréal, will  
speak on "L'Equité dans  
l'emploi", Wednesday, March  
22, at 11:30 a.m. in Room 202.

## LEGAL THEORY WORKSHOP

**Joshua Cohen**, Departments of  
Philosophy and Political Science,  
Massachusetts Institute of  
Technology, Friday, March 24, at  
11:30 a.m. in Room 202.

## ASTRA LECTURES IN ETHICS

**Dr. Werner Menski**, Senior  
Lecturer in South Asian Laws,  
Law Department, School of  
Oriental and African Studies,  
University of London, will speak  
on "The Ethics of Legal  
Pluralism: Asian Laws in  
Britain Towards the Year  
2000", Wednesday, March 29, at  
6:00 p.m. in the Moot Court.

## COURT CLERKS

Chief Justice of Quebec, the

**Honorable Pierre A. Michaud** will  
address the students on court clerkships  
and the administration of justice,  
Wednesday, April 5, at 12:30 p.m. in  
Room 200.

## NOTES FROM THE OFFICE OF UNDERGRADUATE STUDIES

Information for April 1995  
examinations is starting to appear on  
board number 3 on the ground floor.  
Check this board frequently for updated  
examination information.

You can pick up your first term papers  
and assignments at the OUS until  
**Friday, March 31st**, after which time  
they will be recycled.

If you have a first-term deferred or  
supplemental examination to write in  
August and have not yet done anything  
about it, pick up an **application form**  
from the OUS and return it by **Friday  
31st March**. Each deferred or  
supplemental examination costs \$10.00.

The deadline for submission of second  
term term essays and papers is **Friday  
21st April**, unless another, earlier  
deadline has been established by your  
instructor.

**1995 Post Graduate Scholarships**  
applications (Botsford Busteed, John W.

Cook K.C. Prize, Macdonald  
Travelling, Thomas Shearer  
Stewart Travelling, Spiegel  
Sohmer Taxation) and **1995  
Prizes & Scholarships**  
applications (essays, extra-  
curricular activities, improvement & progress and  
Anglophones showing  
proficiency in French) are now  
available from the OUS.

## STUDY OR TEACH AT THE UNIVERSITY OF ILLINOIS

The University of Illinois is  
looking for outstanding graduates  
who would like to teach and/or  
study for a Masters of Laws  
degree. Students interested in  
comparative Canadian-U.S. legal  
research are invited to apply to  
learn and teach research skills  
vis-a-vis U.S. law, through a  
position as a Visiting Instructor  
or as post-graduate student. For  
further information, please  
contact Prof. Stephen Ross  
directly at (217) 333-2502. For  
an application, please write to  
Prof. Laurie Reynolds,  
University of Illinois, College of  
Law, 106 Law Building, 504  
East Pennsylvania Ave.,  
Champaign, Illinois 61820 or  
phone (217) 333-6066.

**Quid Novi** is published weekly by students at  
the Faculty of Law of McGill University, 3661 Peel  
Street, Montréal, H3A 1W9 (Tel: 398-4430).  
Production is made possible by support of the  
Dean's office and by direct funding from the  
students. Les opinions exprimées sont propres aux  
auteurs. Toute contribution doit indiquer l'auteur ou  
son origine et n'est publiée qu'à la discréption du  
comité de rédaction. This newspaper is printed on  
100% recycled paper.

Rédactrice en chef/ Editor-in-chief:  
Laurence Delière

Directrice administrative/ Administrative Director:  
Barbara Frederikse

Directrice de l'information/ News Director:  
Alpana Garg

Pour ce numéro/ For this issue:

Equipe de production/Production Team:  
Emmanuel Castiel

## THE FUTURE OF THE FACULTY

Dean Stephen Toope

Over the last few weeks, a series of consultations have been held with students concerning your visions as to the future of the faculty. These focus groups have proven to very helpful, and I am sure that many of the ideas brought forward will be reflected in planning activities over the next few months. However, the Ad Hoc Planning Committee is still interested in receiving written submissions from groups of students or individuals. Such written submissions will help to formulate the key issues which the Faculty will face in the next few years and, we hope, may provide some indications of possible solutions to the problems that we will undoubtedly confront. Please feel free to comment upon any issue of interest to you, including the vocation of the Faculty, the place of McGill in Quebec, issues of diversity, and the challenges of globalization. In particular, you may wish to express opinions concerning the curriculum, the makeup of the professoriate, the makeup of the student body and our student recruitment process, changing expectations in the legal profession, the library and information services generally, or any other issue that compels your attention. If you wish to submit a brief for informal comments, please do so before June 1st, 1995. Send them directly to my office. Thank you very much for your interest and cooperation.

### A Part of Our Heritage

It is with great surprise and disappointment that we learnt through the grapevines of plans (a petition?) to stop or reduce funding for the Quid. We of course do not know of the specific facts or circumstances as nobody involved in this movement has seen fit to get in contact with us, not even to notify us of their plans. This underhanded method makes us wonder as to the validity of the motives, if any, of such an undertaking. Our first reaction was "what?!?", then something which, despite flexible Quid policy cannot be printed, then we felt that this type of secretive (nobody in upper years knew *anything* about this) venture is precisely why the Quid should not be terminated.

Why do we say termination? Because if the Quid receives even less money, there will be no Quid. We already run a deficit (which we are in the process of rectifying). This is due to our weekly printing costs which run between \$150 and \$250, and a computer card so that we could access E-mail from the office. We do not have pizza parties, staff getaway week-ends, or even a cup of coffee. The mugs and coffee in the office have been donated by us, as is the amount of time we put into the Quid every week. We get no money, no credits, and apparently no recognition for the hours we spend into a unique publication so that students and professors can voice their views, concerns and opinions. Of course some students choose other ways to voice their opinion.

What better place to talk of the future of the Quid than in the Quid itself? Of course that would show the usefulness of the Quid. God forbid!

The Quid has been part of faculty life for YEARS. We're not saying that it's not good to question existing institutions, but our feathers certainly get ruffled when we find out that somebody, who's never been involved with the Quid, goes around discussing the demise of the Quid without ever having spoken to anybody at the Quid about its finances or work. Isn't it the first tenet of politics and human courtesy to inquire into a issue before publicly declaring that there is a problem? Somehow the bad reputation lawyers have may be well founded.

It is nonetheless our opinion, and policy, to preserve the Quid as to continue to make public issues, such as this one, which obviously concern the entire Faculty, public. In this budget-fever / penny pinching season, we must remember that the Quid is more than a monetary issue. The Quid is a necessary forum in a supposedly intellectual Faculty. We believe that it is both a creative and useful "extra-curricular" activity.

We do not understand what the concerns and motives are for this sudden anti-Quid funding campaign. Since nobody in this movement has spoken to us about it, we were hopping that somebody who reads the Quid might respond.

Alexander, you're welcome to come to the Quid and voice your concerns and questions. We'll be more than happy to answer them.

Slaves to the Quid (and to Jody!?)  
Laurence Detière  
Alpana Garg

# Editorial

# JODY TALK

Who is Alexander Pless and what have I written that offends him so much? I have just been informed that whoever this person is he has begun a petition to discontinue funding the *Quid Novi*. This action can tell us several things about the first year law program, at least in the way it relates to him. First, he just has too much free time on his hands. If I were a tool of the administration, which I'm most clearly not, I might suggest that we give the first years another legal research and writing exercise. However, being the person I am I could never dream of doing something so obviously wrong. So instead, I propose that the faculty have an extra coffee house Friday afternoons and make the first years take care of set-up clean-up and make sure they all get so drunk they'll be hung over all weekend.

The next question that I asked myself is what part of free speech does this guy hate so much. If the subject matter in the *Quid* really pisses him off why doesn't he do what every other red blooded law student does when presented with a situation she doesn't like. He should hijack the paper and use it as a propaganda tool to further his socio-political agenda. The only answer I have found as to why he hasn't is that he's illiterate and doesn't know how to write. This leads me to the question of how he got into law school in the first place. On the other hand, I just finished reading a recent Supreme Court decision and just because you can produce 200 pages of

verbiage, does not make you literate.

Perhaps this guy doesn't like recycled paper, and prefers virgin pulpwood. Maybe he feels that if he can't lose his virginity, neither should the paper? Perhaps there is some deep psychological trauma that he has associated with newspapers. Perhaps he just couldn't get the *Gazette* up on the top step during his paper route (or if he's old enough the *Star*). Maybe his parents sent him out into the bushes to pick up the paper every morning. Or maybe he just doesn't realize what life at the faculty would be like without the *Quid*.

Imagine that you might be stuck in class with nothing to read except your casebook. Think about that for a moment, condemned to read nothing but *Houle* for the rest of your law school career. The abolishment of the *Quid* would mean that you would be forced to get all of your information about the faculty from those stupid little postings on the e-mail. I might actually read those postings if they were on a public bulletin board except I just get through them as fast as I can now because I need to do real work, but I digress. If the *Quid* were abolished where would we publish those notes for the professors we love like Cally Jordan? A week without the *Quid* is like a week without sunshine.

Aside from all of this tongue in cheek stuff above there are some real problems with abandoning the *Quid*. Universities are places which should encourage the free exchange of ideas. In the law school we are luckier than most other faculties in that we have a *Law Journal* that dedicates itself to the sharing of ideas. Even though I give the *Journal* a lot of ribbing, its all good natured and I do look forward to getting it in the mail, it helps me to even out my TV stand. However, I don't think that *The Journal* could ever replace the *Quid* as a forum for law student views. I mean can you imagine *The Journal* printing something like Jodytalk? Which brings me to the most important

reason for keeping the *Quid*. Without the *Quid* I wouldn't have a place to vent my spleen. I'm not so presumptuous as to think that everyone reads, or cares to read Jodytalk, but as I have often said, the act of writing it means that the faculty can't ignore me, and it's fun too.

I get up every Monday morning a full two hours before I have to just so that I can get my article in on time. I don't put in all this time and effort so that some misanthrope who craves attention can shut down the only thing that gives me hope. If you crave attention why don't you write something in the *Quid* instead of trying to silence us all.

*Jody Berkes is a third year law student who encourages anyone that cares at all about freedom of expression to vote no to withdrawing funding from the *Quid* and yes to reading Jodytalk.*

*Jody Berkes is, as is the *Quid*, a part of our heritage. Also, Jody is a guy whose name, when run through the spellcheck, yields Joy Berries. Sounds like a new Ben & Jerry's flavor! Yum!*

## POÉSIE JURIDIQUE

- Paule Verlaine, BCL II
- Les cours très longs  
De Monsieur Hamilton
- Blessent mon cœur  
D'une longueur
- Monotone.
- Toute suffocante
- Et blème, quand  
Sonne l'heure,
- Je me souviens
- De mon cégep  
Et je pleure;
- Et je m'en vais
- Au cours mauvais  
Qui m'emporte
- Deci delà (in Ontario, in Quebec)
- Pareil à une  
élève morte.

# I'm Gonna Get You, Sucka!!!!

Terry Doyle, BCL II

My BCL II class began this term with a stirring speech from Dr. Somerville on how we weren't going to learn the specific law of torts, only the general framework on which to hang the contemporary law. We were really going to be taught the "feel" of torts; the forest, not the trees. This speech, and others like it (ie. Prof. Peter Benson's tearful end of year Contracts speech) always brings out in me the feeling of a communal educational experience.

Which is exactly what law school at McGill is not.

All of Prof. Somerville's best intentions aside, law school is a competitive, unhealthy learning atmosphere that breeds disrespect, fear and dislike of fellow students. Big news flash right? So why does this atmosphere of animosity exist, and how can we change it?

It is my belief that a large step towards creating a more healthy, positive and progressive learning environment at McGill law school would be to eliminate the ranking system.

The ranking system creates an environment of competitiveness based not on the desire to attain the standards each individual sets for him or herself, but simply to beat the next person. This sort of

environment does not create questioning lawyers capable of changing the law to fit society's needs, but only lawyers who live in fear of being left behind. To eliminate ranking at McGill would be to replace a system that makes the top ten ranked students in each class feel great, and 130 students (like you and me) feel like second class human beings.

That's the point you say. Since law is an adversarial system, McGill must harden its students for the battles later on in life. Sure! I hear the wills and estates market in St. Catherines is on par with American Gladiators. From what I've seen so far, about 80% of law is not blood sport. For those who do want to litigate, I have a funny feeling that if the curriculum were to have a few more trial advocacy courses, the naturally argumentative would have great training.

'Fine', you say, 'people don't have to go check their ranking'. Doesn't matter, everyone knows its there, and people still have their focus on keeping up with the Joneses.

Let's go one step farther, let's eliminate the marking system all together. Exams could be graded pass/fail and outstanding, with the gold medal going to the student with the most number of outstanding marks. McGill's medical school

and several top U.S. law schools take this approach, and yet nobody makes fun of a Yale law degree. I'm not talking about taking away the recognition of those who do well, I'm saying it shouldn't be done at the expense of the majority of each class.

McGill's admissions standards are very strict, and the people who get accepted at this school are interesting, multidimensional and fundamentally bright human beings. The problem is that we all come into this school from diverse backgrounds, but we all leave exactly the same. If McGill wants to maintain its 'world class' reputation, then it must start taking a proactive approach to changing the law to make the world a better place. To do this it must produce a small diverse group of dynamic lawyers, who are willing to challenge the current state of the law and respond better to the needs of society.

A good place to start to achieve this goal would be to rid the school of the competitive plague that pervades it, and replace it with an environment that promotes the free exchange of ideas and information, not just for the good of the student, but for the law and society as well. To do so would allow law at McGill to become a living, breathing 'framework' which is constantly challenged by its students, and influencing society for the best.

Bilinguisme (*Continued from page 1*)

d'autorités de droit criminel, qui sert à deux classes en anglais et une en français, ne contient que la version anglaise de tous les jugements, qui sont tous de la Cour suprême (à de rares exceptions près) et récents, donc forcément édités dans les deux langues. Nous avons attendu près de deux mois pour ce recueil; aurait-il été difficile d'en faire un bilingue ou encore un en anglais et un second en français?

Voici un autre exemple. Les étudiants anglophones qui suivent le cours de Droit constitutionnel en français peuvent avoir un «tutorial» en anglais (la classe est répartie en trois groupes, deux francophones et un anglophone). Par contre, bien qu'il n'existe pas moins de 6 groupes de tutorat dans chacun des cours de droit criminel de langue anglaise, aucun d'entre eux ne se donne en français, alors qu'il y a au moins douze francophones dans chaque classe.

Ce n'est pas tout. Dans notre cours de Droit constitutionnel, une tendance émerge depuis quelques semaines qui illustre tout à fait la pente sur laquelle nous sommes en train de glisser. Ce cours se donne en français, mais le professeur s'est mis à répondre en anglais aux étudiants qui interviennent dans cette langue. Comme il en résulte assez souvent des dialogues qui excluent le reste de la classe, ce cours s'est «bilinguisé»—ou, devrions-nous dire le vrai mot, c'est-à-dire «anglicisé»?

Nous croyons que les étudiants qui choisissent d'user de leur droit de suivre un cours en français devraient voir ce droit respecté; rajoutons qu'il ne nous est jamais

arrivé de nous faire répondre en français par un professeur donnant un cours en anglais, bien que nous sachions pertinemment qu'ils maîtrisent tout à fait cette langue. Qui plus est, il est normal qu'il en soit ainsi. Nous croyons qu'il faut respecter la volonté de la majorité dans un cours, au moins lorsque les étudiants ont la possibilité de choisir la langue du cours qui leur est offert.

Le problème, il est là: d'une part, on énonce certains droits quant à l'utilisation de la langue; d'autre part, on perçoit ces droits comme étant des priviléges qu'il ne faut pas réclamer et dont il ne faut pas abuser. Nous sommes tout à fait conscients que les francophones représentent une minorité dans cette faculté. Mais il n'est pas juste de leur attribuer des droits si on n'entend pas les appliquer. Il faut briser l'illusion: soit on respecte les règles établies, soit on raye de la politique de la Faculté ce faux-bilinguisme trompeur.

Il existe actuellement un vrai problème quant à la langue et ce problème va plus loin que les exemples donnés. Les francophones de la Faculté sont liés par leur petit nombre à se taire. Or promouvoir un bilinguisme qui n'existe pas, ce n'est pas les aider; c'est leur nuire. Si l'on veut que cette faculté soit unilingue anglophone, il faut l'admettre; si l'on veut par contre qu'elle soit régie par certains éléments de bilinguisme, il faut les appliquer.

Nous sommes constamment éblouis par la qualité du français de nos consoeurs et confrères anglophones. Nous croyons toutefois que l'ouverture de chaque étudiant ne signifie pas l'ouverture de la masse étudiante

et du corps professoral, car comme on le sait, le tout est différent de l'ensemble de ses parties. La dynamique du groupe est telle que les francophones ne peuvent pas—ou alors ne veulent pas—parler parce qu'ils se savent en situation de faiblesse. Ils doivent sans cesse quémander les droits qu'ils sont supposées avoir; comment alors chercher à prendre plus de place?

Et c'est pour cela que nous disons que le débat (référendaire) n'aura pas lieu. Il n'y a pas de place, dans l'état actuel des choses, pour un vrai débat de fond dans cette faculté. Les anglophones (fédéralistes, bien sûr) peuvent compter sur un certain appui francophone, l'inverse n'est cependant jamais vrai. Les francophones souverainistes n'ont jamais d'appui anglophone; pourquoi, dans cette optique, se mettre un groupe à dos? Le débat référendaire s'inscrirait forcément dans une optique de langue et opposerait un lion à une puce.

Nous savons que les liens politiques ne sont pas ce qui compte le plus entre les personnes; mais ils sont cependant importants entre les groupes (et c'est uniquement de groupes que nous parlons ici). Nous savons qu'individuellement chaque étudiant de cette faculté est très tolérant et très ouvert. Mais les masses sont ce qu'elles sont. Et, en bout de ligne, dans une institution de connaissances, à l'avant-garde d'un monde qui s'internationalise, n'est-il pas paradoxal que les débats de société soient empêchés par un obstacle aussi vil que la langue?

Certains francophones, en nous lisant, diront: «ce n'est pas moi». Bien sûr, ce n'est pas vous; c'est nous.

**Diantre!** (Continued from page 1)

susdites se concentrent principalement sur l'influence directrice du comportement humain par les élus (du peuple) et sur l'interprétation de cette même influence par des gens tous de toge vêtus, sans toutefois négliger l'inférence de la vie quotidienne et des valeurs de la société actuelle.

b) Vous êtes un des nombreux étudiants de l'Université McGill.

c) Vous avez été choisi par la Faculté de Droit de l'Université McGill.

d) Vous êtes un futur avocat.

e) Toutes ces réponses: vous êtes bavard.

**2. Pourquoi avoir choisi le droit?**

a) pour la justice

b) parce que la «Faculté de Droit de McGill, qui date du 19e siècle, est ornée de boisés somptueux, au sommet de Peel»...

c) pour les Law Games, tout simplement

d) pour écrire des potins savoureux dans le *Quid Novi*, après c)

**3. Que symbolise le droit pour vous, aujourd'hui?**

A-)

B)

C+)

D)

F+ ou F-)

W)

**4. Depuis que vous êtes en droit:**

a) vous reconnaissiez volontiers Tom Cruise comme un excellent plaideur;

b) vous résumez les publicités qui figurent sur les boîtes de céréales;

c) l'école n'est qu'une partie de votre vie;

d) vous avez toujours raison;

e) vous vous taisez.

**5. Qu'est-ce qui vous passionne le plus en droit?**

a) les faits

b) les questions en litige

c) les prétentions des parties

d) la décision

e) les motifs

f) le *Manuel canadien de la référence juridique* [Petit jeu pour distraire le juriste en herbe: complétez la référence au bas de cette page!]

**6. Où en sont vos ambitions juridiques?**

a) à envoyer votre C.V. pour être Chef d'État

b) à voir, exhibée fièrement, une photographie de vous, sourire confiant aux lèvres, dans une des salles de cours de la Faculté

c) à faire compétition au huard sur le 1\$ et à être en lice pour le prochain 2\$ en monnaie métallique

d) à assister l'assistant de l'assistant de l'aide de l'assistant d'un juge de la Cour des petites créances, bénévolement

e) à obtenir un poste de relieur de «casebooks».

**7. Quels sont, selon vous, les désavantages d'étudier en droit (sans considérer le problème de chômage, S.V.P.)?**

a) vous n'allez plus au cinéma: ça vous rappelle trop vos cours

b) avoir toujours raison (c'est lassant)

c) voir un arbre et se questionner sur sa «nature» juridique

d) la bibliothèque...

**8. À présent, quels sont les avantages de l'étude en droit?**

a) comprendre le procès américain de l'heure sans attendre d'aller voir le film, lequel vous n'iriez pas voir de toute façon...

b) n'avoir jamais tort (c'est gratifiant)

c) contester des contraventions

d) le Thomson House...

**9. Étalez vos talents de futur juriste en expliquant aux non initiés du droit les bases de l'activité juridique occidentale telle qu'on la connaît actuellement:**

a) *A priori, audi alteram partem ab initio a mari usque ad mare. Summa rerum divisio causa?*

**Causans, causans...**

*A posteriori, nullum crimen, nulla poena: sine lege!!! Ab intestat contrario honorem, numerus. Clausus mandamus, mens, rea ad vitam æternam...*

b) cf Baudouin

c) \$

d) \$

**10. Enfin, dans la vie de tous les jours, il est normal que l'émotion vous envahisse en écoutant une chanson ou tout simplement en fredonnant son air, du fait de vos études juridiques. Auquel de ces groupes de chansons vous identifiez-vous davantage?**

a) «Democracy» de Leonard Cohen

«Les élections» de Luc de Larocherière

«You Can Leave Your Hat On» de Joe Cocker

b) «Sunday Bloody Sunday» de U2

«A Criminal Mind» de Gowan

«Killing In The Name» de Rage Against The Machine

c) «Le déserteur» de Boris Vian

«Games Without Frontiers» de Peter Gabriel

«Get Up Stand Up» de Bob Marley

d) «Cecilia» de Simon and Garfunkel\*

«Ticket to Ride», de The Beatles\*

«Owner of a Lonely Heart» de Yes\*

\*\*\*cf éditorial du *Quid Novi* du 14 février sur l'amour et le droit...

Voilà qui conclut le simili test. Je vous remercie d'avoir pris le temps de le consulter et je vous félicite si vous y avez répondu. Pour ma part, je n'ai pas de grille d'analyse des résultats aussi imbécile à vous proposer... Néanmoins, je voudrais vous souhaiter à tous «beaucoup de succès dans vos études»!!!

# THE GALE CUP MOOT

Professor R. Sklar

Like the other 13 teams which failed to make the "Final Four," the McGill Gale Cup Team was unable to come home experiencing the sweet taste of success, but in all other respects it was a great two days for them and their coach at the Gale Cup in Toronto this past weekend.

The "final four" were the University of Alberta, the University of Montreal, Western Ontario, and the University of Saskatchewan, with Saskatchewan capturing first place in the run-off. These four were the only teams to go 2-0 in their two moots. Our team's record was 1-1, their loss coming at the hands of their cross-town rival and finalist, the University of Montreal.

While complaints made under circumstances like these often fall on disinterested ears, allow me to elaborate on that loss (and at the same time give you an idea of the respect out there for Supreme Court judgments in the area of criminal law): in the moot with the U. of M., we were Respondent representing the accused Henri Daviault, whose defence of extreme self-induced intoxication akin to automatism had been accepted by a majority of the Supreme Court under the Charter in a case of sexual assault, overturning a century of Canadian jurisprudence and creating a windstorm of public

criticism.

The bench for the moot was composed of three lower court judges. It was clearly a law-and-order bench, in itself no problem as one frequently gets benches in moots with one unconcealed bias or another. However, they also showed little appreciation of, or even interest in, the traditional and basic mens rea and actus reus principles which formed the backbone of the majority's Charter-based decision in Daviault and hence the backbone of Respondent's submissions. They came close to making fun of Cory's majority position in Daviault, gratuitously ridiculing as well his judgment in Askov (which required the discharge of accused not brought to trial within a reasonable time).

Worse, at least in a competitive moot situation, they never challenged the generalized public policy arguments of the Appellants and their run-and-shoot treatment of mens rea and actus reus principles (done by the U. of M., it must be conceded, with considerable verve and panache). Nevertheless, as the bench itself noted, the competition between the two sides was very close as the Respondent's team of Lisa Horvath and Heidi Kessner was also excellent, but since advancement to the final round is on the basis of won-lost records rather than total point scores (a

clear problem with the Gale Cup whenever two excellent teams go head to head in the preliminary round), that loss knocked us out of the running.

As I said, however, the experience was one all of us thoroughly enjoyed. The organization of the Gale Cup is first class (although having two separate "open bars" during the weekend's festivities was somewhat ironic). Meeting and exchanging views with members of the judiciary, including Justices L'Heureux-Dube, Cory and Gonthier, who sat as the bench for the finals, was exciting for the students, and for their coach.

Our team was represented by Lisa Horvath, Heidi Kessner, Chris Greenwood and David Levy, students we can be very proud of. I'm delighted to extend thanks to Prof. Dennis Klinck and to fourth-year student Antoinette Issa who helped out in the judging of the practice moots, and to Prof. Patrick Healy, Joe Batista and Lori Weitzman (the defence lawyer and prosecutor respectively in the Daviault case) who formed a particularly high-powered bench in the concluding dress-rehearsal practice.

We'll be back . . .

*Ed.'s note: Professor Sklar, maybe the problem was that the judges were not impressed by your pre-Old Brewery Mission outfit!*